NO. 11 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF
V.
STATE OF LOUISIANA, DEFENDANT

MEMORANDUM FOR INTERVENERS IN ANSWER TO OPPOSITION MEMORANDUM BY THE UNITED STATES

An opposition memorandum was filed by the United States against the right of the coastal parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary to intervene in this action.

The first objection urged is that applicants are subdivisions of the defendant State and subject to the authority of the State Legislature.

The second objection is that when the State is a party to a suit involving a matter of sovereignty interest, it must be deemed to represent all its citizens and creatures, and an intervener has the burden of showing some compelling interest in his own right apart from his interest in a class with all other creatures of the State.

The simple answer to the first objection is that there is no issue here as to the validity or authority of any State law with respect to the property or rights of the intervening parishes.

To the contrary, interveners alleged that as subdivisions of the State, they have the legal privilege of appearing in Court for the protection of their rights, (Meyer v. Plaquemines Parish, 1943, 11 So. 2d 291; Police Jury of La Salle Parish v. Police Jury of Catahoula Parish, 1919, 145 La. 1053, 83 So. 250). Further, the State is without authority to litigate for a political subdivision which possesses the right to sue and be sued. (State v. Drouet, 1943, 203 La. 743, 14 So. 2d 622; State v. Tensas Delta Land Co., Ltd., 1910, 126 La. 59, 52 So. 216, 221).

Under the State Constitution, applicants have the lawful right of local government and taxation within their respective jurisdictions and boundaries, which are coextensive with the State's historic legal gulf-

ward boundary, and they have a legal right to maintain their territorial integrity therefor; they have a 10% oil royalty interest, or property right, in the submerged lands within their said boundaries, and they are entitled to a portion of the funds collected by the United States and deposited in the Treasury to the extent of their said 10% royalty interest; they have issued millions of dollars of bonds expressly secured by said 10% oil royalty interest, with the faith and credit of their respective parishes pledged to the payment thereof.

They are entitled to $200,000 annually from severance taxes collected on oil, gas and other minerals produced within their parishes, including said submerged lands. (See p. 8 Brief in support of Motion, and Second Defense pp. 24-25).

Applicants cited the applicable provisions of the State Constitution and laws in support of all of the above. (See foot notes 9, 10, 13, 16, 17, pp. 7-9 of Brief in Support of Motion).

Certainly opponent cannot seriously contend that all of the above legal and property rights do not constitute "some compelling interest in his (their) own right apart from his (their) interest in a class with all other creatures of the State" to make inapplicable the lone case cited, New Jersey v. New York.

The settled jurisprudence of this Court supports applicants' right to intervene in this action.

In Oklahoma v. Texas, 42 S. Ct. 406, 409, this Court held,

> "It long has been settled that claims to property or funds which a court has taken possession and control through a receiver or like officer may be dealt with as ancillary to the suit wherein the possession is taken and the control exercised—and this although independent suits to enforce the claims could not be entertained in that Court."

In that case, there were conflicting claims of two States and the United States to a river bed, (involving a matter of sovereignty interest), which called for adjudication. There were **many persons** who had placer mining locations and mineral interests intervening to assert rights to particular tracts and to claim proceeds from oil taken therefrom, which funds were under the Court's control.

The Court held no other court could lawfully interfere with or disturb that possession or control.

The same happened in this action, when this Court ordered other litigation dismissed, and all further leasing or operations discontinued in the disputed area pending the further order of this court.

The funds collected by the United States and deposited in the Treasury, in which applicants have an

interest, are likewise subject to control and disposition of this Court (See p 8, footnote 14, Brief in Support of Motion).

In Texas v. Florida, 59 S. Ct. 563, 567, this Court held:

> "The present suit is between States, and the other jurisdictional requirements being satisfied, the individual parties whose presence is necessary or proper for the determination of the case or controversy between the States are properly made parties defendant."

These decisions amply support applicants' right of intervention in this action under FRCP Rule 24 (a) (2) and new Rule 9 (2) of this Court.

The inadequacy of representation of applicants' interests by defendant, and the fact that applicants will be bound by the judgment or orders rendered in this action are fully set out in applicants' Motion for leave to file Intervention and Brief in support of Motion, pp. 1-6.

The opposition to the motion for leave to file intervention should be dismissed, and applicants' motion for leave to file intervention herein should be granted.

Applicants further request that an order be rendered granting them 20 minutes time on April 8, 1957, when this matter is fixed for hearing, to present their

arguments and the law supporting their claims and defenses set forth in their Intervention and Answer.

Respectfully submitted,

L. H. PEREZ, District Attorney and ex-Officio Attorney for Parishes of Plaquemines and St. Bernard and Counsel for Interveners,

L. O. PECOT, District Attorney and ex-Officio Attorney for Parishes of Iberia and St. Mary and Counsel for Interveners,

BERTRAND DE BLANC, District Attorney and Counsel for Interveners,

FRANK LANGRIDGE, District Attorney and ex-Officio Attorney for Parish of Jefferson and Counsel for Interveners,

FRANK J. LOONEY,
Of Counsel.

March, 1957.

PROOF OF SERVICE

I certify that copies of the foregoing were served on the Attorney General and Solicitor General of the United States and the Attorney General of the State of Louisiana by air mail special delivery.

L. H. PEREZ, Of Counsel,
A Member of the Bar of this Court

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Office - Supreme Court, U.
FILED
MAR 28 1957
JOHN T. FEY, Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1957 1958

UNITED STATES OF AMERICA, PLAINTIFF
v.
STATE OF LOUISIANA

Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

JACK P. F. GREMILLION
Attorney General
State Capitol
Baton Rouge, Louisiana

W. SCOTT WILKINSON
Special Assistant Attorney General
17th Floor Beck Building
Shreveport, Louisiana

EDWARD M. CARMOUCHE
Special Assistant Attorney General
Kirby Building
Lake Charles, Louisiana

JOHN L. MADDEN
Special Assistant Attorney General
State Capitol
Baton Rouge, Louisiana

BAILEY WALSH
Special Counsel
1025 Connecticut Avenue, N. W.
Washington, D. C.

HUGH M. WILKINSON
VICTOR A. SACHSE
MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
Of Counsel

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